

CHAPTER 20.62

NONCONFORMING STRUCTURES AND USES

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20.62.010 Purpose

Nonconforming uses, structures, and parking are inconsistent with a coherent zoning plan and the established standards and regulations set forth in this Title. This chapter establishes procedures for the continuance or abatement of existing structures and uses that do not conform to the provisions of the Zoning Code, especially in residential zoning districts, and which may be adverse to the general welfare of persons and property and detrimental to the orderly development of the City as envisioned by the goals and policies of the General Plan. The purpose of these provisions is to:

- A. Bring nonconforming uses and structures into conformance with the development standards set forth in the City's Zoning Code.
- B. Reduce the occurrence and limit the extent of nonconformance of nonconforming uses and structures, especially in residential zoning districts.
- C. Phase out certain nonconforming uses and structures in accordance with the abatement periods set forth below, without infringing upon the constitutional rights of property owners.

20.62.020 Applicability

Uses, buildings, structures or lots that become nonconforming due to reclassification, ordinance changes, or annexations may be continued subject to the provisions of this Chapter.

20.62.030 Determination of Nonconformity

- A. The Planning Director shall determine the nonconformity of any use, building, structure, or lot.
- B. Any use found to have been lawfully established and maintained, but which does not conform with the use regulations or required conditions for the district in which it is located by reason of adoption or amendment of this code or by reason of annexation of territory to the City, shall be deemed to be a nonconforming use. A nonconforming use includes a use that was lawfully established and maintained but is conditionally permitted in the district and has not obtained a use permit. A use shall not be considered to have been "lawfully established and maintained" and is an illegal use if it was established or operated without required permits and licenses, including but not limited to permits and licenses required by any federal, state, or local government agency.
- C. Any structure or building that was lawfully erected, but which does not conform with the property development regulations prescribed in the regulations for the district in which the structure is located by reason of adoption or amendment of this code or by reason of annexation of territory to the City, shall be deemed to be a legal nonconforming structure. A building or structure shall not be considered to have been "lawfully erected" and is an illegal structure if it was constructed without required permits, including but not limited to permits required by any federal, state, or local government agency.
- D. When a use or structure does not conform with the use regulations or required conditions for the district in which it is located, the property owner or person asserting that it is a nonconforming use or a nonconforming structure has the burden to provide sufficient documentation to the Planning Director that the use or structure was lawfully established, maintained, and erected and is nonconforming by reason of adoption or amendment of this code or by reason of annexation of territory to the City.
- E. A use or structure that was not lawfully established, maintained, or erected is contrary to the provisions of this code and the City may commence an action or proceedings for the abatement and removal of the use or structure pursuant to the provisions of Chapter 20.96.

20.62.040 Nonconforming Structures

- A. Maintenance and Repairs. Ordinary maintenance and repairs may be made to legal

nonconforming structures. No structural alterations shall be made which would prolong the life of the supporting members of a structure, except as provided in this section.

- B. Interior Alterations. Changes to interior partitions or other nonstructural improvements and repairs may be made to a legal nonconforming structure, provided that the cost of the desired improvement or repair shall not exceed 50 percent of the replacement cost of the nonconforming structure, as determined by the Building Director, over any consecutive 12 month period.
- C. Structural Alterations. Structural elements of a legal nonconforming structure may be modified or repaired subject to the following provision:
 - 1. Alteration of up to 25 percent of the structural elements within any 12 month period may be permitted by right.
 - 2. Alteration of up to 50 percent of the structural elements within any 12 month period may be permitted upon the approval of a modification permit.
 - 3. Alteration of up to 75 percent of the structural elements within any 12 month period may be permitted upon the approval of a use permit by the Planning Director, subject to the findings and provisions contained in Section 20.62.040 (F).
- D. Additions. Structures legally nonconforming for reasons other than for parking, open space, floor area, or building bulk, may be enlarged, extended or expanded subject to the following provisions:
 - 1. An increase of up to 25 percent of the gross floor area within any 12 month period may be permitted by right.
 - 2. An increase of up to 50 percent of the gross floor area within any 12 month period may be permitted upon the approval of a modification permit.
 - 3. An increase of up to 75 percent of the gross floor area within any 12 month period may be permitted upon the approval of a use permit by the Planning Director, subject to the following findings and provisions contained in Section 20.62.040 (F).

No addition shall cause an increase in the structure's inconsistency with the regulations of the Zoning Code.

- E. Exceptions. The provisions of this section shall not apply to the following

circumstances:

1. Seismic Retrofits. Alterations to a structure required to comply with the minimum provisions of Chapter 15.07, "Earthquake Hazard Reduction," and California Government Code Section 8875.
 2. Public Health & Safety. Structural elements of a legal nonconforming structure may be modified or repaired if the Building Director determines that such modification or repair is immediately necessary to protect the health and safety of the public or occupants of the nonconforming structure, or adjacent property and the cost does not exceed 50 percent of the replacement cost of the legal nonconforming structure, as determined by the Building Director.
 3. Nonconforming Parking. Structures which are nonconforming due to off-street parking and loading requirements shall be subject to the provisions of Section 20.62.050.
- F. Required Findings. A use permit required for the alteration of a nonconforming structure may be approved only if the following findings are made in addition to those findings specified in Chapter 20.91.
1. The cost of the improvements to be made is minor in comparison to the value of the existing nonconforming condition.
 2. The cost of correcting the nonconforming condition would exceed the cost of the other alterations proposed.
 3. Retention of the nonconforming condition is necessary to maintain reasonable use of the structure.
 4. The alteration does not increase the structure's inconsistency with the regulations of the Zoning Code.

20.62.050 Nonconforming Parking

- A. Residential Uses. Where residential uses are nonconforming only because they do not conform to the off-street parking requirements of this code, the following alterations are permitted:

1. Number of Spaces

- a. Residential development having less than 2 parking spaces per dwelling unit:
 - (1) Repair and maintenance, interior alterations, and structural alterations, as provided for in Section 20.62.040.A through C.
 - (2) Minor additions to existing buildings, such as the construction of bathrooms, closets and hallways, or the expansion of existing rooms, subject to the floor area limits of Section 20.62.0.040.D.1 through D.2..
 - (3) Addition of a new room provided that there is no net increase in the number of habitable rooms, upon the approval of a modification permit, subject to the floor area limits of Section 20.62.0.040.D.1 through D.3.
- b. Residential development having at least 2 parking spaces per dwelling unit may be altered or expanded as provided in Subsection A.1.a, except that:
 - (1) The approval of a modification permit shall not be required for the addition of a new room provided that there is no net increase in the number of habitable rooms.
 - (2) Additional rooms may be added upon the approval of a modification permit.

2. Size of Parking Spaces.

- a. No discretionary approvals shall be required for the alteration or expansion of buildings which are nonconforming only because amendments to this code have changed the dimensions of required parking spaces subsequent to the original construction of the building, provided that the building and any proposed addition shall conform to current provisions of this code with regard to the number of required parking spaces.
- b. Where the dimensions of required parking spaces do not meet provisions of Subsection A.2.a., above, or current standards, alteration of the structure may be permitted only upon the approval of

a modification permit.

3. Covered and Enclosed Parking.

Residential development having less than the required number of enclosed parking spaces:

- a. Repair and maintenance, interior alterations, and structural alterations, as provided for in Section 20.62.040.A through C.
- b. Minor additions to existing buildings, such as the construction of bathrooms, closets and hallways, or the expansion of existing rooms, subject to the floor area limits of Section 20.62.0.040.D.
- c. Addition of a new room provided that there is no net increase in the number of habitable rooms, upon the approval of a modification permit, subject to the floor area limits of Section 20.62.0.040.D..

B. Nonresidential Uses. Where nonresidential structures and uses are nonconforming only because they do not provide the number of parking spaces required by this code, the following shall be controlling:

1. Continuation or Change. Nonconforming structures and uses in nonresidential zoning districts, and in areas where residential uses are not provided for in Planned Community Districts or Specific Plan Districts, may be continued or changed to a use requiring the same or less on-site parking, consistent with all other provisions of this code.
2. Repair and maintenance, interior alterations, and structural alterations, as provided for in Section 20.62.040.A through C..
3. Enlargement or Intensification.

a. More Than 10% Increase

The nonconforming structure or use may be enlarged by more than 10 percent of its original gross floor area, or onsite uses may be intensified such that code required parking would increase by more than 10 percent, in any 12 month period, only if all code required parking is provided, unless a waiver or reduction of the parking requirement is authorized by use permit approved by the Planning

Director.

b. Less Than 10% Increase

A nonconforming structure or use may be enlarged by less than 10 percent of its original gross floor area or intensified to generate less than a 10 percent increase in code required parking, upon the provision of code required parking attributable to the enlargement or intensification.

4. Removal. All nonconforming rights with regard to parking shall be lost for any non-accessory building which is demolished.

20.62.060 Landmark Buildings

- A. Purpose. To preserve historic structures, encourage their adaptive reuse, and revitalize the older commercial areas in which they are located by granting relief from restrictions on nonconforming uses and structures in this Chapter while maintaining the principal use and minimizing impacts on the surrounding area.
- B. Applicability. The following types of buildings are recognized as having importance to the history and architecture of the City of Newport Beach and are collectively designated as Landmark Buildings:
1. Landmark Theaters. The term Landmark Theaters shall mean any building constructed for use as a cinema or theater that (a) was constructed on or before December 12, 1950; (b) has a single screen or stage; and (c) was designed to seat more than 300 people.
 2. Landmark Structure. The term Landmark Structure shall mean any building listed on the National Register of Historic Places, constructed prior to December 12, 1950.
- C. Exemptions. The principal use of a Landmark Building may be modified, maintained, altered, increased or intensified by way of a change in operational characteristics without obtaining a use permit required by the provisions of Section 20.82, subject to compliance with the conditions of Subsection (D) and irrespective of whether the principal use has been inactive for any period of time since inception. An accessory use may be initiated, or intensified by way of a change in operational characteristics, in a Landmark Building without obtaining a use permit required by Section 20.82 subject to compliance with the conditions of Subsection (D). Structural alterations may be made to a Landmark Building without obtaining a use

permit pursuant to Section 20.62.040(C) subject to compliance with the conditions of Subsection (D). For purposes of this Section the term accessory use shall mean any use that is permitted as a matter of right or pursuant to a use permit in the zoning district in which the Landmark Building is located. For purposes of this Section, the term principal use shall mean, in the case of a Landmark Theatre, the (i) display of motion pictures; and (ii) any similar entertainment use that occurred on a regular basis within the structure from its inception to January 1, 2003. In the case of a Landmark Structure, the term principal use shall be the use that occupied the greatest amount of floor area as of January 1, 2003.

D. Conditions. The exemptions specified in Subsection C are applicable on the following conditions.

1. Any new use that is initiated, and any use that is intensified by way of a change in operational characteristics, is accessory and remains subordinate to the then current and ongoing principal use of the Landmark Building.
2. The principal use of the Landmark Building occupies, at all times, no less than seventy percent (70%) of the of the gross floor area of the Landmark Building.
3. A use permit is issued pursuant to the provisions of Chapter 20.89 (Alcoholic Beverage Outlets) prior to the initiation of any accessory use that involves the sale or consumption of alcoholic beverages.
4. Any permit required by any other titles (other than Title 20) of the Municipal Code has been issued prior to the initiation or intensification (by way of a change in operational characteristics) of any accessory use of the Landmark Building.
5. Any accessory use in any Landmark Theater is conducted between the hours of 8:00 a.m. and 12:00 a.m.
6. The required off-street parking of all uses after any additions, intensification, modification or expansion (including credit for reductions in off-street parking resulting from the elimination of accessory uses existing on January 1, 2003) is less than the required off-street parking for the principal and accessory uses prior to any additions, intensification, modification or expansion.
7. The façade and/or exterior architectural features of the Landmark Building are not substantially altered or are restored to original condition and the

exterior walls of the Landmark Building remain in substantially the same location as they existed on January 1, 2003.

20.62.070 Restoration of Damage or Destruction.

- A. Nonconforming Use. A nonconforming use occupying land, a building, or portion thereof which is otherwise conforming and damaged or destroyed by fire, explosion, earthquake, or other disaster may be reestablished, provided that restoration work is commenced within 12 months after the damage or destruction occurs and is pursued diligently to completion, and provided that an abatement period for the use has not been established pursuant to Section 20.62.090.
- B. Nonconforming Structure or Parking.
 - 1. Determination of Replacement Value. The replacement value of the structure shall be determined by the Building Director. However, the Building Director shall accept the appraised replacement value of the structure as determined by an independent, licensed appraiser retained by the property owner, should the property owner choose to do so. The replacement value of the structure shall be in excess of the building foundation at the time of the damage.
 - 2. Up To 90 % Damage or Destruction.
 - a. General Provisions. A nonconforming structure, which is partially destroyed by fire, explosion, earthquake, or other disaster, may be repaired or restored as a matter of right if the cost of the repair or restoration is less than 90 percent of the replacement value of the structure. The rights conferred by this section are contingent upon diligent application for a building permit after the damage or partial destruction occurs and diligent pursuit of repairs to completion.
 - b. Special Provisions. Notwithstanding the provisions of subparagraph a, where a structure is nonconforming due to an encroachment into a setback or into the required distance between buildings, and the encroachment is more than 90 percent destroyed, a modification permit shall be required for replacement or repair of the encroachment.

When a structure is nonconforming due to excessive height, bulk,

gross floor area, or lack of open space, and the nonconforming condition is more than 90 percent destroyed, the nonconforming condition may be restored only after approval of a use permit approved by the Planning Director pursuant to Chapter 20.91 with the following additional findings, subject to the limitations in Subsection D below:

- (1) That replacement of the nonconforming condition is necessary to maintain reasonable use of the structure or individual condominium unit.
- (2) That replacement of the nonconforming condition is necessary to preserve a substantial property right.

3. Greater Than 90% Destruction. If a nonconforming structure is damaged or destroyed by fire, explosion, earthquake, or other disaster to an extent of more than 90 percent of its replacement value, then the nonconformity may be restored only if a use permit is first approved by the Planning Director provided application for the use permit is made within 12 months after the damage or destruction occurs and the following findings are made in addition to those findings required in accordance with Chapter 20.91 subject to the limitations in Subsection D below:

- a. That replacement of the nonconforming condition is necessary to maintain reasonable use of the property or individual condominium unit.
- b. That replacement of the nonconforming condition is necessary to preserve a substantial property right.

4. Removal of Portions of the Structure Not Destroyed or Damaged. If a nonconforming structure is damaged or destroyed by fire, explosion, earthquake, or other disaster to an extent of more than 50 percent of its replacement value, then a maximum additional 20 percent of the structure may be removed and replaced if necessary to pursue restoration of the structure. Any additional portions of the structure may be removed and replaced, only upon the approval of a use permit by the Planning Director and subject to the following findings in addition to those findings required in accordance with Chapter 20.91.

- a. That substantial additional expense would be created by the necessity of working around the additional portion of the structure to be

removed when repairing the damaged or destroyed portion.

- b. That replacement of the nonconforming portion of the structure which was voluntarily removed is necessary to preserve a substantial property right; or that the rebuilt portion of the structure will more nearly conform to the provisions of this code.
- C. Aging and Deterioration. The provisions of this section shall not be construed to permit replacement of nonconforming conditions in structures undergoing renovation, remodel, or reconstruction, structures damaged by ongoing natural processes such as dry rot or termites or structure which have deteriorated due to age.
- D. Condominium Units. When a use permit is required for replacement or repair of any condominium units which are damaged or destroyed by fire earthquake, explosion, or other disaster, no reduction in the number of units shall be required. The replacement units shall be permitted to be equivalent in size and location to the units which were damaged or destroyed.

20.62.080 Termination of Nonconforming Status

- A. Unless otherwise provided in this chapter, a nonconforming use must cease operations and cannot be reestablished when one or more of the following events occur:
 - 1. The nonconforming use remains inactive for 180 consecutive days.
 - 2. The nonconforming use is converted to a conforming use.
 - 3. The nonconforming use is enlarged, extended, expanded or in any other manner changed to increase its inconsistency with the regulations of this code.
 - 4. The abatement period expires as set forth in Section 20.62.090.
- B. Exceptions
 - 1. A nonconforming use which has been active for 180 days or more may be reestablished, subject to the approval of the Planning Director upon finding that:
 - a. The use is normally permitted, either by right or by the approval of a use permit, and is nonconforming only by virtue

of the required conditions of the district in which it is located; and

- b. The property or structure where the nonconforming use was located contains a substantial investment in the structural design, equipment, or fixtures that are unique to and necessary for the operation of the former use; and
 - c. The property owner has made a good faith effort to reestablish the use and has maintained the property in a manner to prevent unsafe or unsightly condition during the period of inactivity.
- 2. A nonconforming use that has been inactive for 190 days or more may be reestablished when located within a Landmark Building, pursuant to the requirements Section 20.62.065.
- C. Abatement. Whenever the Planning Director finds that any of the conditions set forth in Subsection A exist, the Planning Director shall issue a written order of abatement as specified in Section 20.62.090.D of this chapter.

20.62.090 Abatement Periods

- A. Time Periods for Abatement in Residential Districts. Nonconforming uses located in Residential Districts or in an area where residential uses are provided for in the Planned Community Districts or Specific Plan Districts shall be abated and terminated upon the expiration of the periods of times set forth below.
 - 1. Nonconforming Use of Land When No Structure Is Involved. The nonconforming uses of land not involving a structure shall be abated within one year.
 - 2. Nonconforming Use of Land Involving a Structure. In any district, the nonconforming uses of land wherein a structure is involved shall be discontinued within the following maximum time limits:
 - a. A nonconforming use of land involving a structure shall be discontinued within (i) one year, or (ii) at the expiration of the term of a lease on the property, or (iii) at the expiration of any current operating license that is required by state law, whichever is earliest. Any such lease shall be the last lease entered into as to the subject land prior to December 7, 2007.

b. The applicable amortization period for a residential care facility under this Section 20.62.090.A.2.a may be extended, upon application to the Director on a form prescribed by the same, under one or both of the following circumstances:

i. When the owner or occupant has timely applied for a use permit or reasonable accommodation pursuant to Chapter 20.91A or Chapter 20.98 and is diligently pursuing that administrative process, as determined by the Director;

ii. When the business owner or occupant is contractually obligated to continue the provision of a program or service for one or more persons so long as any such contract provides for a normal and customary term for the provision of those services. No such term shall exceed 60 days.

Application for an extension under this Section 20.62.090.A.2.b is separate and apart from application for an extension under Section 20.62.090.B. A residential care facility may apply for an extension under either or both processes.

Exception: Multi-Family Residential uses and Two-Family Residential uses located in Residential Districts (Chapter 20.10), and in areas where residential uses are provided for in Planned Community Districts or Specific Plan Districts, which are nonconforming only in terms of their density or parking or their use as Multi-Family Residential or Two-Family Residential shall not be subject to abatement.

c. In nonresidential districts, and in areas where residential uses are not provided for in Planned Community Districts or Specific Plan Districts, the nonconforming use of land wherein a structure is involved shall be discontinued within ten years after the Planning Commission completes proceedings for the abatement of the use pursuant to Section 20.62.090.D.

d. Notwithstanding the above, any maximum abatement periods specified in Planned Community Districts or Specific Plan Districts shall be as shown in the specific plan or development plan.

Exception: No abatement period will be set for the use of a Landmark Building (see Section 20.62.060), which may be changed, expanded, increased or intensified and structural alterations may be made subject to compliance with the provisions of Section 20.62.060.

B. Extension of Abatement Period for Nonconforming Uses.

1. Purpose. A property owner may request an extension of the abatement period to amortize the property owner's investment to avoid an unconstitutional taking of property. The City will evaluate evidence of economic hardship arising from abatement, the nonconformity's impact on the community, and other factors that may affect the length of the abatement period required to avoid an unconstitutional taking.
2. Application Requirements. Except as otherwise provided herein, the owner of property subject to an abatement period, or his authorized agent, may file an application for extension of the abatement period pursuant to this Subsection 20.62.090.B. no later than 90 days prior to the expiration of the abatement period set forth in this chapter. The application shall be filed in a manner consistent with the requirements contained in Chapter 20.90, and shall include the following additional information:
 - a. The length of the requested extension of the abatement period.
 - b. Evidence in support of the findings included in Section 20.62.090.B.4 below.
3. Notice and Hearing; Hearing Officer Action. A Hearing Officer, as defined in Section 20.03.030, hereby is designated to review the application for an extension at a public hearing. Notice of the hearing shall be as specified in Chapter 20.91. Notice shall be provided to all owners and occupants of property within 300 feet of the property, as specified in Section 20.91.030.C. The Hearing Officer, by resolution, shall approve, conditionally approve, or deny the request for an extension to the abatement period. The resolution shall include findings of fact pertinent to the criteria set forth in Section 20.62.090.A.2.b. or as required by Section 20.62.090.B.
4. Findings. In reviewing an application for an extension to the abatement period, the Hearing Officer shall grant an extension only as required to avoid an unconstitutional taking of property. The Planning Commission shall consider:
 - a. The length of the abatement period in relation to the owner's investment in the use;

- b. The length of time the use was operating prior to the date of nonconformity;
- c. The suitability of the structure for an alternative use;
- d. Harm to the public if the use remains beyond the abatement period;
- e. The cost and feasibility of relocating the use to another site; and
- f. Other evidence relevant to the determination of whether an extension of the abatement period is required to avoid an unconstitutional taking of property.

- 5. Notice to Owner. The Planning Director shall formally notify the owner of nonconforming property of the action of the Commission by mailing the owner a copy of the resolution not later than 10 days following the date of its adoption by the Planning Commission.

C. Establishment of Abatement Period in Nonresidential Districts.

- 1. Planning Commission Action. Where the Planning Commission determines that the orderly termination of a nonconforming use in a nonresidential district, or in areas where residential uses are not provided for in Planned Community Districts or Specific Plan Districts, is necessary to promote the health, safety, and general welfare and to comply with the provisions of the Zoning Code and goals and policies of the General Plan, shall establish a ten-year abatement period pursuant to Subsection A.2.
- 2. Notice and Hearing. Notice and hearing shall be provided as specified in Subsection B above.

D. Order of Abatement.

- 1. Order of Abatement. Whenever the Planning Director finds that any of the conditions set forth in Section 20.62.080.A exist, the Director shall immediately issue a written order of abatement and shall give notice to the property owners and all persons in possession of the property. Unless the nonconformity has been previously abated, the owner and/or person in possession shall comply within the time and in the manner stated in the order.
- 2. Enforcement. The City shall be authorized to enforce the provisions of this Chapter by civil action, utilization of the procedures in Chapter 20.96, or any other proceeding or method permitted by law or equity.

20.62.100 Rights of Appeal

- A. Appeals. Decisions of the Planning Director may be appealed to the Planning Commission and decisions of the Planning Commission and Hearing Officer may be appealed to the City Council.
- B. Procedures. Procedures for appeals shall be as prescribed by Chapter 20.95: Appeals, provided that, notwithstanding Section 20.95.060, the standard of review of a Hearing Officer decision shall not be de novo and the City Council shall determine whether the findings made by the Hearing Officer are supported by substantial evidence presented during the evidentiary hearing. The City Council, acting as the appellate body, may sustain, reverse, or modify the decision of the Hearing Officer or remand the matter for further consideration, which remand shall include specific issues to be considered or a direction for a de novo hearing.